Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1993

GARY R. TATE,
Petitioner

v.

MIKE GILLIAM, WARDEN, WINN CORRECTIONAL CENTER, RICHARD P. IEYOUB, ATTORNEY GENERAL, STATE OF LOUISIANA
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

GARY R. TATE
Pro Se Counsel
Post Office Box 243
Tangipahoa, LA 70465
(504) 229-5621

QUESTIONS PRESENTED FOR REVIEW

I. Whether a defendant has a Constitutional right to due process and equal protection of the law under a state statute?

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OPINIONS BELOW

The First Circuit Court of Appeals entered an order, without an opinion, dated June 21, 1991, it is reproduced at (A-25). The Louisiana Supreme Court additionally entered an order, without opinion dated October 16, 1992, it is reproduced at (A-24). The United States District Court gave an opinion in Order and Reasons dated May 26, 1993, which is reproduced at (A-5). The Fifth Circuit Court of Appeals refused to review the petition on two occasions, denying Certificate of Probable Cause, reproduced at (A-1) and (A-3).

JURISDICTION OF THE COURT

The judgment of the United States Court of Appeals was entered on May 26, 1994. This Petition in Certiorari is filed within 90 days of that date. The

jurisdiction of this court is invoked under 28 U.S.C., §1254(1).

STATEMENT OF THE CASE

Petitioner, Gary Tate, was convicted of aggravated crime against nature, R.S. 14:89.1, on Donna M. Davis at his residence in Tangipahoa, Louisiana, on January 29, 1983. Trial Judge Samuel T. Rowe sentenced the petitioner to serve fifteen (15) years in the Department of Corrections without the benefit of parole, probation or suspension of sentence.

Petitioner, Tate, has failed to receive due process and equal protection of the law in the lower federal and state courts by well established construction of the interpretation of statute art. 770(2) of the Code of Criminal Procedure.

Detective George Heath made a prejudicial remark to an alleged crime of

kidnapping involving Tate, in which he was not on trial for violating statute art. 770(2) of the Louisiana Code of Criminal procedure. (T-45).[1]

The trial judge gave his reason for not granting the mistrial (T-54) which is demonstrated:

> The state is not held accountable for the statements under certain circumstances of the investigating officer while made on the stand, providing the investigating officer does not fall within the category of a court official.

Petitioner on appeal in **State v. Tate**, 506 So.2d 546, 550 (La. App. 1st Cir.) writ denied, 511 So.2d 1152 (La. 1987) denied Petitioner Tate relief because the detective did not exhibit a pattern of violating art. 770 (2). However, during the appeal, if the court would have been aware of the pattern of

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[1]References to "T" are to the record of the trial proceeding transcribed by Ms. Linda B. Watts. References to "A" are to the appendix of this Petition.

Det. Heath making prejudicial remarks of other alleged crimes, in other cases, Petitioner Tate would have been granted relief. The petitioner did not have this knowledge during his appeal.

The petitioner later became aware of the pattern of Det. Heath violating art. 770(2) which petitioner submitted his claim back before the State Courts for review.

The state courts refused to acknowledge the pattern of the detective which requires a mandatory reversal under the statute, and prior judicial decisions.

The Eastern District Judge Morey L. Sear dismissed petitioner's claim with prejudice, which his decision was clearly erroneous citing case law that did not apply to Petitioner Tate's claim.

The Fifth Circuit Court of Appeals refused to review the habeas corpus

petition denying the petitioner certificate of probable cause issued by the Eastern District Judge, Morey L. Sear (A-3).

Judge Sear also claimed that the petitioner had not made a substantial showing of a denial of a federal right and is not entitled to CPC and that petitioner raised a number of issues not raised in the district court. (A-1)

Petitioner Tate filed another notice of appeal in the Fifth Circuit asking the court to review the habeas corpus petition. The Court asked Petitioner Tate to submit a brief, in which **Tate** filed and presented the same two issues that were presented to the Eastern District except for the presenting of the evidence. Judge Sear had opened the door in Order and Reasons that there was overwhelming evidence of petitioner's guilt. (A-5)

Petitioner Tate countered the overwhelming evidence, in which he felt he had a legal right.

Judge Sear failed to address petitioner's issues directly before the Court. Petitioner Tate has a major constitutional violation under the statute, unlike the cases cited to deny petitioner, which gave him every federal right to petition the federal courts.[2]

The Fifth Circuit Court of Appeals refused to review the petition (A-1).

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO DECIDE WHETHER A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER A STATE STATUTE.

The Court of Appeal, First Circuit, refused to grant petitioner relief on prior appeal in **State v. Tate**, 506 So.2d

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[2]The Constitution of the United States is the supreme law of the land, and must always be followed. Under the Fourteenth Amendment the petitioner has a federal right.

546, 550 (La. App. 1st Cir.) writ denied, 511 So.2d 1152 (La. 1987) which the Louisiana Supreme Court affirmed.

The violation of statute art. 770 (2) C.Cr.P., in **State v. Tate**, Supra, the court ruled:

> "A police officer's statement is not the comment of a court official, (but such an officer will be held to the same standard if his answers show a pattern of unresponsiveness or improper intent)."

Petitioner was unaware of the pattern of Det. Heath on prior appeal, later when petitioner became aware of the pattern, petitioner brought his statutory violation back before the State court for review. The interpretation of art. 770(2) of the Code of Criminal Procedure is well established. The first construction placed on the statute art. 770(2) stems from the ruling set forth in **State v. Schwartz**, 354 So.2d 1332 (La. 1978) footnote (2) which states in part:

> Officer Dabdoub, whose testimony gratuitously implicated the defendant in other crimes, has given similar "unresponsive answers" in other cases which have been reviewed by this court, the recurrence of such testimony by experienced and knowledgeable witnesses like Officer Dabdoub establishes too clear a pattern for this court to continue to excuse the highly prejudicial unresponsive remark as being inadvertent, unplanned or unexpected by prosecuting attorneys.

The petitioner now demonstrates that Detective Heath has given similar "unresponsive answers" in other cases, which have also been reviewed by the Louisiana Supreme Court. See **State v. Lewis,** 315 So.2d 626, 630 (La. 1975) and **State v. Jones,** 332 So.2d 466, 471 (La. 1976) [3]

Det. Heath not only had two (2) prior cases violating statute art. 770(2)

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[3]The pattern of the officer submitted in State v. Schwartz, supra, are under the same circumstances as in Petitioner Tate's case now before the court.

of the Code of Criminal Procedure giving "unresponsive answers", the detective went forward and gave a direct responsive answer to an alleged crime of kidnapping that Petitioner Tate was not on trial for (T-45) which prejudiced him before the jury.

Statute art. 770(2) of the Code of Criminal Procedure:

> "upon motion of defendant, a mistrial shall be ordered when a remark or comment made within the hearing of the jury by the judge, district attorney, or a court official during the trial or in argument referring directly or indirectly to:
>
> (2) Another crime committed or alleged to have been committed by the defendant as to which evidence is not admissible.
>
> An admonition to the jury to disregard the remark shall not be sufficient to prevent a mistrial.

Det. Heath is categorically a court official in the following decisions:

The **Schwartz** decision laid the foundation of art. 770(2) when such an

officer has a pattern of violating the statute in previous cases. The state courts have repeatedly upheld **Schwartz**: **State v. Turner**, 392 So.2d 436, 441 (La. 1980); **State v. Harris**, 383 So.2d 1, 9 (La. 1980); **State v. Goods**, 403 So.2d 1205, 1207, footnote (3) (La. 1981); **State v. Perry**, 420 So.2d 139, 146 (La. 1982; **State v. Nuccio**, 454 So.2d 93, 101 (La. 1984); **State v. Johnson**, 457 So.2d 56, 57 (La. App. 1st Cir. 1984); **State v. Hicks**, 554 So.2d 1298, 1304 (La. App. 1st Cir. 1989)

Equal protection of the laws requires equal operation of the laws on all persons in like circumstances. **Maxwell v. Bugbee**, 250 U.S. 525, 40 S.Ct. 2, 63 L.Ed 1124 (1919).

The construction of a state statute by the state's highest court is binding on the United States Supreme Court. **Eisenstadt v. Baird**, 405 U.S. 438, 92

S.Ct. 1029, 31 L.Ed 349 (1972).

The petitioner has demonstrated the interpretation of statute art. 770(2) under the decisions of the state courts. This court should grant review of such a major constitutional violation of due process and equal protection under the Fourteenth Amendment of the U. S. Constitution.

The petitioner asks that he be treated equally under the U.S. Constitution, warrants the granting of certiorari.

CONCLUSION

The U. S. Constitution requires a defendant to be treated equally, petitioner has been denied that right, warrants the granting of certiorari.

RESPECTFULLY SUBMITTED,

GARY R. TATE
PRO SE COUNSEL
POST OFFICE BOX 243
TANGIPAHOA, LA 70465
(504) 229-5621

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3409
USDC No. CA-92-4299 "G" (5)

GARY R. TATE, Petitioner-Appellant
versus
MIKE GILLIAM, Warden, Winn Correctional Center and
RICHARD P.IEYOUB, Attorney General, State of Louisiana
Respondents-Appellees

Appeal from the United States District Court for the Eastern District of Louisiana

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O R D E R:

Gary R. Tate requests that this Court grant him a certificate of probable cause (CPC). He alleges that the state trial court erred by denying a mistrial based on a police officer's alleged prejudicial comments regarding other crimes Tate allegedly committed, and that state court repeatedly misinterpreted state law. He has not made a substantial showing of the denial of a federal right,

and thus, is not entitled to a CPC. **Barefoot v. Estelle,** 463 U.S. 880, 893, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983).

Tate has raised, for the first time on appeal, a number of issues not raised in the district court. Those issues are not properly before this Court. **Beck v. Lynaugh**, 842 F.2d 759, 762 (5th Cir. 1988).

CPC is DENIED.

CAROLYN DINEEN KING
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GARY R. TATE CIVIL ACTION

VERSUS NO. 92-4299 "G" (5)

MIKE GILLIAM, ET AL

CERTIFICATE AS TO PROBABLE CAUSE

A notice of appeal having been filed in the captioned habeas corpus case, in which the detention complained of arises out of process issued by a state court, the court, considering the record in the case and the requirement of FRAP 22(b), hereby finds that:

[ ] there is probable cause for an appeal

[X] a certificate of probable cause should not issue. (reasons below)

REASONS FOR DENIAL: Petitioner rests his habeas corpus petition on two grounds, neither of which are viable under Fifth Circuit case law. First, petitioner's claim of evidentiary error at his state criminal trial has not been shown to be a crucial, critical, or highly significant factor in the context of the entire trial, so habeas relief is inappropriate. See **Thomas v. Lynaugh**, 812 f.2d 225, 230 (5th Cir.), cert. denied, 484 U.W. 842 (1987). Second, petitioner's claim that the state court misinterpreted state law is without merit because a federal court cannot review a state court's interpretation of its own laws in a habeas proceeding. **See Cook v. Morrill**, 783 F.2d 593, 596 (5th Cir. 1986. Accordingly, petitioner's claims may be in good faith, but they do not merit the

issuance of a certificate of probable cause under FRAP 22(b).

Date: 6/16/93 s/Morey L. Sear
U.S. District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GARY R. TATE	CIVIL ACTION
VERSUS	NUMBER; 92-4299
MIKE GILLIAM	SECTION: "G"(5)

ORDER AND REASONS

This matter was referred to a United States Magistrate Judge for the purpose of conducting hearings, including evidentiary hearings, if necessary, and submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C §636(b)(1) (B) and (C), and, as applicable, Rule 8(b) of the Rules Governing Section 2254 Cases.

Upon a review of the record, including the state court record submitted by the respondent, the court has determined that it is sufficient for the purpose of adjudication of petitioner's claims, that a federal evidentiary hearing is not necessary, and that the petition should be dismissed for the following reasons.

Accordingly, the order of reference

to the Magistrate Judge is hereby revoked and it is ordered that the petition be denied.

Gary R. Tate, petitioner herein, is a state court prisoner currently incarcerated at the Winn Correctional Center, Winnfield, Louisiana. On September 15, 1983, Tate was convicted of the crime of aggravated crime against nature in the Twenty-First Judicial District Court for the Parish of Tangipahoa, State of Louisiana, for which he was sentenced to fifteen years at hard labor, without benefit of parole, probation, or suspension of sentence.

Tate's conviction and sentence were affirmed on direct appeal. **State v. Tate**, 506 So.2d 546 (La. App. 1st Cir.), writ denied, 511 So.2d 1152 (la. 1987). His subsequent application for writs was denied by the Louisiana Supreme Court. **State ex rel. Tate v. State**, 605 So.2d 1142 (La. 1992).

State court remedies have been exhausted as to the claims for relief presented herein. 28 U.S.C. §2254(b); **Rose v. Lundy**, 455 U.S. 509, 102 S.Ct. 1198 (1982).

In the instant petition under 28 U.S.C. §2254, Tate frames his grounds for relief as follows:

> Ground one: "The trial court erred in denying petitioner his statutory right to a mistrial when a police officer made a prejudicial remark to another alleged crime."
>
> Ground two: "Petitioner has bene denied due process and equal protection of the law by the state courts interpretation of statute."
>
> (Petition at p. 5)

Before proceeding to the particular claims enunciated by Tate, some preliminary observations and comments are in order. Both of petitioner's claims are phrased in terms of perceived error committed by the state trial and appellate court. In this regard, it is worth recalling the role of the federal

courts in habeas corpus proceedings brought under 28 U.S.C. §2254. The Court does not sit as a "super" state supreme court, its role being significantly more limited than that of a state appellate court in directly reviewing a defendant's conviction and sentence. **Skillern v. Estelle**, 702 F.2d 839, 852 (5th Cir. 1983), cert. denied, 469 U.S. 873, 105 S.Ct. 224 (1984). The proper inquiry is not whether the state courts erred or whether state law has been transgressed but whether there has been a violation of the petitioner's constitutional rights. 28 U.S.C §2254(a); **Engle v. Isaac**, 456 U.S. 107, 102 S.Ct. 1558 (1982); **Bailey v.Procunier**, 744 F.2d 1166, 1168 (5th Cir. 1984).

Petitioner's first claim is that the prosecutor elicited prejudicial testimony from a State's witness regarding another crime. Tate alleges that state law mandated the granting of a mistrial

following the improper remark and that the trial judge erred in denying same.

The State's first witness at petitioner's trial was the victim. [4] She testified, in part, that she had been struck numerous times by petitioner during the course of the assault. (Tr. p. 18). During cross-examination, petitioner's counsel questioned the victim regarding the extent of her injuries and the following transpired:

> Q. Were you hospitalized as a result of this beating?
>
> A. No sir.
>
> Q. Did you require medical treatment?
>
> A. No sir.
>
> Q. Do you recall ever making or signing a statement where you stated that you required medical treatment?
>
> A. No sir.

---

[4] A summary of the evidence presented at Tate's trial can be found in the opinion of the Louisiana First Circuit Court of Appeal affirming his conviction and sentence. Tate 506 So.2d at 548-50.

Q. You don't.

BY MR. DILEO:
(The Prosecutor)

Your Honor I would like to ask at this time that the jury be retired.

BY THE COURT:

Retire the jury.

JURY RETIRED FROM THE COURTROOM.

BY MR. DILEO:

The purpose for asking that the jury be excused at this time is that Mr. Schwartz is obviously alluding to a statement made by Miss Davis, however the statement that he is alluding to.. and know what it is..is with reference to another charge,and it is not with reference to this charge. My caution.....it is only out of an abundance of caution that I point this out to the court because I do not want to get into a position where we begin to discuss other charges that...

BY THE COURT:

If he is going to open it you have to follow through.

CONVERSATION OFF RECORD BETWEEN ATTORNEYS.

BY MR. DILEO:

This is not even in regard to

this particular charge.

BY MR. SCHWARTZ:
(Defense Counsel)

This is in relation to a charge of second degree battery that was never brought..or that he was never billed on.

BY MR. DILEO:

He has been billed on it.

BY MR. SCHWARTZ;

Okay...and the purpose of this Your Honor is that the statement which she signed states multiple bruises and contusions requiring medical attention. It is a contradictive statement which she has made, it is used for impeachment. I appreciate Mr. Dileo's...

BY THE COURT:

You've got the right, she is on cross examination. Then mr. Dileo is going to have the right as soon as you open the door.

BY MR. SCHWARTZ:

With reference to a second degree battery?

BY MR. DILEO:

I am going to have the right to ...

BY THE COURT:

Well he is going to have the right to go further into the battery situation.

BY MR. DILEO:

I can then ask if he brings it up with reference to this charge..and shows this particular statement Your Honor I can ask were other charges filed against him.

BY THE COURT:

You do that and....

BY MR. SCHWARTZ:

I am going to ask for a mistrial.

BY MR. DILEO:

Well your Honor if he offers this into evidence..

BY THE COURT:

I have already given you a response on it Sam.

BY MR. DILEO:

Your Honor may I please make my argument. If he brings up the fact that this particular piece of evidence is..or he introduces it let's say, or offers it to her for identification with reference to second degree....

BY THE COURT:

Doesn't make any difference..all out of the same series of events.

BY MR. DILEO:

All I'm saying is Your Honor I can ask her did you file second degree battery charge against him. That is the charge.

BY THE COURT:

That's not even....

BY MR. DILEO:

Your Honor, all I'm saying is...and I respect the Court's ruling, however...

BY THE COURT:

I have already ruled.

BY MR. DILEO:

Let me understand the Court's ruling then.

BY THE COURT:

The ruling is very simple..you can't ask her what kind of charges she brought against him.

BY MR. DILEO:

If he shows that to her...

BY THE COURT:

I have already ruled.

BY MR. DILEO:

> Then I want to voice my objection to the introduction of it because if I can't ask a question that he has already offered something on Your Honor...

BY THE COURT:

> They are already ruled on.

(Tr. pp. 26-29)

Following a recess for lunch, petitioner's counsel resumed his line of questioning. At his request, the victim read an affidavit, prepared by someone else but signed by the victim, which led to the issuance of a warrant for Tate's arrest on charges of second degree battery. [5] (Tr. p. 30). The examination of the victim ultimately concluded uneventfully.

The State then called its second witness, George Heath. Although the crime

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[5]The affidavit states that "....Gary Tate did strike affiant numerous times with his fists causing multiple bruises and contusions requiring medical attention."

in question was committed in Tangipahoa Parish, Heath, a Detective with the Jefferson Parish Sheriff's Office, had participated in the investigation because the victim resided in Metairie. The direct examination of Heath began as follows:

BY MR. DILEO:

Q. Please give us your name and occupation.

A. My name is George Heath, I am a detective assigned to the homicide division with the Jefferson Parish Sheriff's Office.

Q. How long have you been employed by the Jefferson Parish Sheriff's office?

A. Approximately two years but...

Q. Where were you employed prior to that?

A. City of New Orleans.

Q. In what capacity?

A. I was a detective in homicide there for about ten years.

Q. Detective Heath were you so employed by the Jefferson Parish Sheriff's office on January 30, 1983?

A. Yes sir I did.

Q. Did you have occasion that date to engage in an investigation involving one Donna Davis?

A. Yes sir I did.

Q. Would you please tell the court how you happened to meet Miss Davis?

BY MR. SCHWARTZ:

Your Honor I am going to at this time object to any.... I am going to object to any statement that was made by Miss Davis to this officer as being hearsay.

BY MR. DILEO:

I asked him how he met Miss Davis. I don't see how we even involve approaching that.

BY THE COURT:

Proceed.

BY MR. DILEO:

Q. How did you meed Miss Davis?

A. She was making a complaint that she was a victim of a kidnapping.

BY MR. SCHWARTZ:

Your Honor I am going to object and ask for a mistrial.

BY THE COURT:

Retire the jury.

(Tr. pp. 35-36)

Out of the jury's presence, petitioner's counsel argued that Heath's testimony regarding the victim's kidnapping complaint was a direct and deliberate reference to another crime allegedly committed by Tate. The prosecutor countered by stating that the testimony was totally unanticipated and that he had only met with Heath briefly before trial. From a review of the record, it appears that the trial judge was unfamiliar with Heath as well. After considering the arguments of counsel,the judge denied Tate's request for a mistrial but admonished the jury to disregard heath's remark. Following Heath, the State's third and final witness testified as to photographs he had taken of the victim's injuries. The defense called but one witness who

testified, albeit unconvincingly, that he was with Tate and the victim on the night in question and observed no physical or sexual assault. The jury deliberated for approximately thirty minutes before returning a unanimous verdict of guilty.[6]

Tate alleges that Detective Heath's testimony regarding the victim's kidnapping complaint constituted an impermissible reference to another crime. He argues that the reference was deliberate and motivated by improper intent, thereby elevating Heath to the status of a court official and entitling petitioner to a mistrial under LSA-C.Cr.P.Art. 770(2).

An evidentiary error in a state criminal trial justifies habeas corpus relief only if the error is so extreme

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[6]On page two of his supporting brief, petitioner erroneously indicates that the jury's vote was ten to two. The trial transcript reflects that the vote was unanimous, thereby obviating the need for polling of the jury. (Tr. p.87)

that it rendered the petitioner's trial fundamentally unfair. **Bailey**, 744 F.2d at 1168; **Skillern**, 720 F.2d at 852. An unfair trial is one that has been largely robbed of the dignity due a rational process. **Menzies v. Procunier**, 7443 F.2d 281, 288 (5th Cir. 1984). Habeas relief is appropriate only when the testimony challenged as prejudicial amounts to a crucial, critical, or highly significant factor in the context of the entire trial. **Thomas v. Lynaugh** 812 F.2d 225, 230 (5th Cir.), cert. denied, 484 U.S. 842, 108 S.Ct. 132 (1987).

As demonstrated by the transcript excerpts noted above, by the time the challenged remark was made, petitioner had already elicited testimony from the victim regarding second degree battery charges that had been levied against him. Before that testimony was given, the prosecutor asked that the jury be retired and expressed his concern over its

potentially prejudicial nature. In the preliminary questioning of Heath, he testified that he first met the victim when she was making a kidnaping complaint. Both the trial judge and the prosecutor were unfamiliar with Heath at the time of Tate's trial. Based on his questioning of the prosecutor and having had a chance to observe the witness,the judge made the factual finding that the challenged remark was inadvertent and thus not chargeable to the State, a credibility determination that the trial judge is certainly in a much more advantageous position to make. See, e.g., **Maggio v. Fulford**, 462 U.S. 111, 103 S.Ct. 2261 (1983). The Court also notes that the disputed testimony is not a direct, unveiled, unambiguous reference to petitioner. **Meyer v.Estelle**, 621 F.2d 769, 772 (5th Cir. 1980). Contrary to petitioner's assertion, Heath did not exhibit a pattern of unresponsiveness or

improper intent in the confines of petitioner's trial. considering the overwhelming evidence of petitioner's guilt, the Court is unable to characterize Heath's remark as crucial, critical, or highly significant in the context of the entire trial. Tate's first claim is rejected.

In his second ground for relief, Tate alleges that the state courts misinterpreted state law in repeatedly rejecting his first claim. This contention has no merit. A federal court cannot review a state court's interpretation of its own law in a habeas corpus proceeding. **Cook v. Morrill**, 783 F.2d 593, 596 (5th Cir. 1986); **Moreno v. Estelle**, 717 F.2d 171 179 (5th Cir. 1983), cert. denied, 466 U.s. 975, 104 S.Ct. 2353 (1984). Due process is satisfied where an individual has been given notice nd an opportunity to be heard, just like that afforded to

petitioner in his direct criminal appeal and post-conviction proceedings. It does not guarantee a decision free of error or a ruling of petitioner's liking. Tate's equal protection argument is likewise unpersuasive.

Having concluded that the grounds raised in the instant writ application are without merit and that a federal evidentiary hearing is not necessary, accordingly,

IT IS ORDERED that the petition of Gary R. Tate is dismissed with prejudice.

New Orleans, Louisiana this 26 day of May, 1993.

S/ Morey L. Sear
U. S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GARY R. TATE	CIVIL ACTION
VERSUS	NUMBER: 92-4299
MIKE GILLIAM	SECTION: "G"(5)

J U D G M E N T

The Court, having considered the petition, the record, the applicable law, and for the written reasons assigned,

IT IS ORDERED, ADJUDGED, AND DECREED that the petition of Gary R. Tate is **DISMISSED WITH PREJUDICE.**

New Orleans, Louisiana, this 26 day of May, 1993.

s/ Morey L.Sear
UNITED STATES DISTRICT JUDGE

THE SUPREME COURT OF
THE STATE OF LOUISIANA

STATE EX REL GARY R. TATE

VS. NO. 91-KH-2432

STATE OF LOUISIANA

- - - - - -

IN RE: Tate, Gary r.; - Plaintiff(s); Applying for Supervisory and/or Remedial Writ; to the Court of Appeal, First Circuit, Number KW91 9484; Parish of Tangipahoa 21st Judicial District Court Div. "C" Number 47,096.

- - - - - -

October 16, 1992

Denied

JCW

PFC

WFM

JLD

HTL

LFC

PH

Supreme Court of Louisiana
October 16, 1992
Clerk of Court
For the Court

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA, EX REL #KW91 0484
GARY R. TATE
VERSUS
STATE OF LOUISIANA JUNE 21, 1991

In re: Gary R. Tate applying for supervisory writs, 21st Judicial District Court, Parish of Tangipahoa No. 46,096

WRIT DENIED IN PART; WRIT GRANTED IN PART. The district court property denied post-conviction claims numbers one and three. In this respect, the writ is denied.

Claim number two, regarding ineffective assistance of counsel, is a claim which, if established, would entitle petitioner to relief. A state response should have been ordered by the district court. See La. C.Cr.P. art. 927 A. In this respect, the writ is granted, the district court's denial vacated, and the matter remanded for further proceedings.

JLW
DWL
WAE

COURT OF APPEAL, FIRST CIRCUIT

S/KAREN WEST
DEPUTY CLERK OF COURT
FOR THE COURT